



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Logics, Inc.--Request for Reconsideration

File: B-237411.2

Date: April 25, 1990

Craig V. Russell, Esq., Russell, Krafft, Gruber & Huber, for the protester.

Barbara C. Coles, Esq., Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision is affirmed where protester fails to indicate error of fact or law or information not previously considered that would warrant reversal or modification of prior decision.

DECISION

Logics, Inc., requests reconsideration of our decision, Logics, Inc., B-237411, Feb. 1, 1990, 90-1 CPD ¶ 140, denying its protest challenging the cancellation of request for proposals (RFP) No. DAAA09-89-R-0012, issued by the U.S. Army Armament, Munitions and Chemical Command, for 129 microwave chassis and 86 oscillators for the M163 Vulcan Air Defense System, and the subsequent purchase of such equipment from AEL Defense Corporation under an existing contract. Logics argues that we failed to consider a number of facts in the record and complains that our analysis of the applicable statutory and regulatory requirements was in error.

We affirm our prior decision.

The Army issued the RFP on January 6, 1989, as an unrestricted procurement; however, clause H-6 of the RFP notified offerors of a 10 percent price evaluation preference for proposals submitted by small disadvantaged business (SDB) concerns. Initial offers were due on March 14, and Logics, invoking the price preference accorded SDBs, was one of four offerors responding to the RFP. Best and final offers (BAFOs) were received on June 30, and nearly 2 months later, on August 29, the Army canceled the procurement, claiming a change in government requirements.

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On September 8, the Army issued an order to AEL for the 129 microwave chassis under AEL's existing contract No. DAAA09-88-6-0020/0006.

Also on September 8, Logics, unaware of the award to AEL, wrote a letter to the Commander of the Armament, Munitions and Chemical Command, asking for an investigation of the cancellation of the RFP, and a reversal of the Army's decision. On October 9, Logics received the Commander's September 28 response to its inquiry. The response explained that because of the increasing urgency of the need for the microwave chassis portion of the requirement, an order had been "awarded to a source already in production of this item who could make the earliest possible delivery in support of the Vulcan Air Defense System." With respect to the oscillators, the Commander explained that no award had been made and Logics would be given the opportunity to submit an offer in the event of the resolicitation.

In its original protest, Logics argued that the Army violated the competitive process by canceling the procurement, and illegally discriminated against Logics, presumably because it submitted an offer as an SDB concern. Logics also alleged that the procurement was tainted by bid rigging. As evidence for these allegations, Logics asserted that despite the fact that it submitted the lowest-priced offer, the procurement was canceled and award was made to an existing contractor at a higher price.

In our decision, we held that the contracting agency's actions canceling the RFP and ordering part of the canceled requirement from an existing supplier were reasonable where, in view of an unexpected deterioration of supply stock, only one source could meet the agency's urgent need for the item. In a negotiated procurement, a contracting officer need only have a reasonable basis to cancel a solicitation after receipt of proposals, as opposed to the cogent and compelling reason required for cancellation of an invitation for bids after receipt of sealed bids. ACR Elecs., Inc., B-232130.2, B-232130.3, Dec. 9, 1988, 88-2 CPD ¶ 577. We concluded that the Army reasonably determined that cancellation of the RFP was justified because of the increasing urgency of maintaining an adequate supply of the microwave chassis to ensure field readiness.

Regarding the Army's decision to award a sole-source order to AEL, our decision pointed out that agencies are permitted to use other than competitive procedures to procure goods or services where requirements are of such unusual and compelling urgency that the government would be seriously injured if the agency were not allowed to limit the number

of sources from which it seeks bids or proposals. Even though this authority is limited by 10 U.S.C. § 2304(e) (1988), requiring that agencies seek offers from as many potential sources as is practicable under the circumstances, an agency, nonetheless, has authority under 10 U.S.C. § 2304(c)(2) to limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. Support Sys. Assocs., Inc., B-232473, B-232473.2, Jan. 5, 1989, 89-1 CPD ¶ 11.

Here, an unexpected deterioration in the stock of microwave chassis meant that many field units would become inoperable by December 1989 for lack of replacement parts. Further, since AEL was the only offeror that had previously produced microwave chassis, and hence need not be required to undergo first article testing and approval, and since AEL had an existing contract for the equipment, the Army's conclusion that AEL was the only source in a position to perform the work in the available time seemed reasonable. As a result, we found no basis to object to the agency's determination to limit competition by issuing a sole-source order to AEL for the critical requirement, thus avoiding a 5-month delay for first article testing and approval, and achieving the earlier delivery date of October 1990.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. See 4 C.F.R. § 21.12(a) (1989); Daylight Plastics, Inc.--Reconsideration, B-225057.2, Apr. 28, 1987, 87-1 CPD ¶ 440. The mere repetition of arguments made during the initial protest, or disagreement with our decision, does not meet this standard. G&C Enters., Inc.--Reconsideration, B-233537.2, May 10, 1989, 89-1 CPD ¶ 439.

In its reconsideration request, Logics essentially reiterates the arguments it made in the original protest. Initially, it reasserts that the deterioration in the supply stock of the chassis was due to a lack of advance planning by the agency, and that poor planning cannot properly justify the cancellation and the resulting sole-source award to AEL. In this regard, Logics argues that it would appear that the shortage of microwave chassis was evident at the time the solicitation was issued, although Logics concedes that the record does not establish this fact.

Logics correctly asserts that lack of advance planning may not properly support use of an urgency determination to

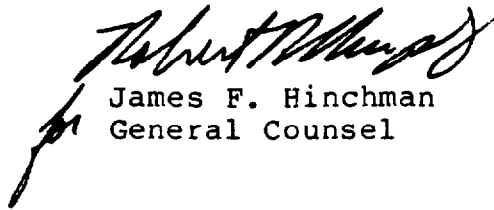
limit competition. See 10 U.S.C. § 2304(f)(5)(A); Lister Bolt & Chain, Ltd., B-224473, Sept. 15, 1986, 86-2 CPD ¶ 305. In our prior review, we found that the record clearly established that the Army experienced an unexpected increase in the demand for this equipment, after the solicitation was issued, due to a greater than anticipated number of field failures. In addition, the Army had an increased need for the equipment in connection with a conversion program for the Vulcan Air Defense System, which was also not identified until after the issuance of the RFP. Logics has not shown our prior decision to be incorrect in any of these areas, nor has it introduced any other fact or error that leads us to conclude that the equipment shortage here was caused by lack of advance planning by the agency.

In reiterating the other arguments made in its original protest, Logics contends that the award of the sole-source order to AEL was improper because the agency did not request an offer from Logics, and thus failed to follow the statutory mandate to maximize competition, even where urgent circumstances permit limiting full and open competition. The protester states that it was a potential source and should have been solicited because it had submitted a BAFO and had "passed" its preaward survey. Further, Logics argues that if the agency had negotiated with it, Logics would have demonstrated that it, too, could meet the delivery schedule. Logics ignores the fact that as a first-time chassis producer, unlike AEL, it would be subject to first article testing and approval, which would prolong the procurement by at least 5 months. Only AEL was in a position to produce the equipment without first article testing and the attendant delay.

Logics also contends that our prior decision was erroneous because the agency failed to prove that AEL would meet the proposed delivery schedule. Whether AEL is capable of delivering the equipment in accordance with the delivery schedule is a matter of contractor responsibility. In issuing an order to AEL under the firm's existing contract, the agency necessarily determined that AEL was a responsible contractor. Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14. We will not review such affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials, or that definitive responsibility criteria in the solicitation have not been met. 4 C.F.R. § 21.3(m)(5).

Since there is no indication in the record, and Logics has not alleged, that either of these exceptions applies, our Office will not review the responsibility determination.

Our prior decision is affirmed.



James F. Hinchman
General Counsel